

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GERALD A. KELLOGG,)
)
Plaintiff,) 8:07CV70
)
vs.) ORDER
)
NIKE, INC. et al.,)
)
Defendants.)

This matter is before the court on the plaintiff's motion to compel (Filing No. 62). In plaintiff's supporting brief, but not in his motion, plaintiff requests an immediate hearing to accommodate a scheduled deposition in Portland, Oregon, on September 24, 2007 (Filing No. 64). The court notes the 30(b)(6) deposition was scheduled for Irvine, California, on September 24, 2007, was noticed on September 5, 2007 (Filing No. 51). It appears the notice was amended for the deposition to take place in Portland, Oregon, on September 24, 2007 (Filing No. 61). In any event, the plaintiff waited until September 19, 2007, to file his motion to compel. As such, there are only two business days to intervene between the filing of the motion to compel and the scheduled deposition in Portland. During the interval between September 5 and September 19, plaintiff made significant efforts to confer with defendant's counsel to avoid the filing of a motion to compel. **See** Filing No. 63. Since there are substantial issues to be resolved by the motion to compel, defendants must have an opportunity to digest and respond to the motion in accordance with the rules. Accordingly, the court will not entertain plaintiff's motion for an expedited hearing in light of the belated filing of the motion to compel. However, the parties are advised that if the motion to compel is subsequently granted, in whole or in part, and the production of such materials would have been material to the 30(b)(6) deposition scheduled for September 24, 2007, in Portland, Oregon, the court may impose sanctions to include the retaking of the deposition with costs, including attorney's fees, being assessed.

IT IS SO ORDERED.

Dated this 20th day of September, 2007.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge